92-1844

No.

Supreme Court, U.S.
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In The
Supreme Court of the United States

October Term, 1992

STATE OF LOUISIANA,
Petitioner

versus

THOMAS ABADIE,
Respondent

Petition For A Writ Of Certiorari To The Supreme Court Of The State of Louisiana

BRIEF OF THE PETITIONER

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QUESTIONS PRESENTED

I.

Was defendant in "custody" as defined by Miranda v. Arizona and Minnesota v. Murphy for purposes of Edwards v. Arizona, when he voluntarily went to the detective bureau at the request of the sheriff, remained there voluntarily, and was being driven home by deputies at his request?

II.

Does a request to submit to a polygraph examination rise to the level of custodial interrogation under Miranda?

III.

Was Abadie's return to the detective bureau at the request of the sheriff to submit to a polygraph examination "custodial interrogation" under Miranda v. Arizona or a "reinitiation of interrogation" under Edwards v. Arizona and Minnick v. Mississippi?

INTERESTED PARTIES

Thomas Abadie, Defendant

Indigent Defender Board, Jefferson Parish, Louisiana, Counsel Of Record For Respondent

Richard Ieyoub, Attorney General For The State Of Louisiana

John M. Mamoulides, District Attorney, Parish Of Jefferson, State Of Louisiana

Dorothy A. Pendergast, Assistant District Attorney, Parish Of Jefferson, State Of Louisiana

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BRIEF OF THE PETITIONER

OPINIONS BELOW

The trial court's reasons for judgment are unreported and were issued on July 26, 1991. The verbatim transcript of those reasons for denying the motion to suppress appear at appendix - C. A writ to the Louisiana Court of Appeal, Fifth Circuit, was denied with an unpublished opinion. State v. Abadie, No. 91-K-901, slip op. (Fifth Circuit Court of Appeal, March 11, 1992).

Appendix B.

The defendant's writ to the Louisiana Supreme Court was granted. The Court reversed the trial court and suppressed the confession by written opinion January 19, 1993: State v. Abadie, 612 So.2d 1 (La. 1993). Appendix A. The State's application for a rehearing was denied on February 18, 1993: State v. Abadie, 612 So.2d 1 (La. 1993).

STATEMENT OF JURISDICTION

Jurisdiction to review by certiorari a decision of the highest court of a state in a criminal case is set out in Title 28 of the United States Code, Section 1257(a), and is further provided for in Rules 10.1(b) and (c) of this Court. The Louisiana Supreme Court denied rehearing on February 18, 1993.

CONSTITUTIONAL AND STATUTORY PROVISIONS IMPLICATED

Amendment V, United States Constitution:

". . .; nor shall be compelled in any criminal case to be a witness against himself, . . ."

Amendment XIV, United States Constitution:

"...[n]or shall any State deprive any person of life, liberty,

or property, without due process of law."

LSA-R.S. 14:30 First Degree Murder:

A. First degree murder is the killing of a human being:

. . .

(5) When the offender has the specific intent to kill or to inflict great bodily harm upon a victim under the age of twelve.

. . .

C. Whoever commits the crime of first degree murder shall be punished by death or by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence in accordance with the determination of the jury.

STATEMENT OF THE CASE

Thomas Abadie is awaiting trial on the charge of First Degree Murder, a violation of La. R.S. 14:30, in connection with the strangulation death of seven year old Raquel Fabre. This murder occurred on November 15, 1990, in Westwego, Louisiana. Defendant filed a Motion to Suppress all written confessions and exculpatory statements obtained from him by police officers. The motion was heard by the trial court on June 13, 14, 25, and 26, 1991. The defendant did not testify at the hearing. After the

four day hearing, the district court judge denied defendant's motion to suppress with reasons. The Louisiana Court of Appeal, Fifth Circuit, denied writs and affirmed the ruling of the trial court. The Louisiana Supreme Court granted writs and, after briefing and oral argument, reversed the trial court and suppressed the statements. State v. Abadie, 612 So.2d 1 (La. 1993) The State's application for rehearing was denied on February 18, 1993.

STATEMENT OF THE FACTS

On Friday, November 16, 1990, following the death and discovery of the body of seven year old Raquel Fabre, Thomas Abadie and John Heath were transported to the Jefferson Parish Correctional Center (JPCC) for the purpose of obtaining blood, saliva, and hair samples. According to Detective Joe Ellington, Westwego Police Department, both men were verbally advised of their Miranda rights and told that this procedure was strictly voluntary on their parts. The Miranda warnings were given as a matter of procedure, even though neither man at that time was a suspect or in custody. Once at the JPCC, a written consent was obtained from both men, as was a written advise of rights waiver.

Upon partially completing the body searches at JPCC, Abadie and Heath were transported to the Jefferson Parish Detective Bureau to complete the procedure. At the Bureau, Abadie was interviewed by Officer Bruce Chauvet at approximately 2:00 p.m. He was again verbally advised of his rights by Officer Chauvet, who began to question Abadie about an unrelated attempted rape of a cab driver which had occurred on November 11, 1990, in Westwego. During this questioning, Abadie became angry with Chauvet and accused him of "trying to put a bum rap" on Abadie. He added that he had come to the bureau to assist the police in their investigation of the murder but he was not staying any longer. Abadie stated that he was going to speak to his "friend" Cal Hotard and demanded he be taken home. At that point, questioning was discontinued and Abadie was put in a police vehicle for transport to his home.

On route to his home, Abadie was returned to the Detective Bureau at the request of Chief Richard Rodrigue. Chief Rodrigue testified that he did not question Abadie in any way, but rather explained to him that they would like Abadie to submit to a routine polygraph examination since he found the

deceased child's body. At that time, Abadie told Chief Rodrigue that he wanted to speak to Cal Hotard, an attorney. Mr. Hotard was called at the request of Chief Rodrigue and Abadie was allowed to speak to him in private and was advised by Mr. Hotard that he could not advise or represent Abadie because of his recent election as Judge of Second Parish Court. Mr. Hotard testified that he did not instruct Abadie not to talk to the police. It should be noted that Judge Hotard testified in accordance with Chief Rodrigue.

After speaking to Hotard, Abadie used Rodrigue's telephone to call his brother, Philip Abadie. After speaking to Philip, Abadie requested to speak to Detective Maggie Pernia whom Abadie trusted and knew from a previous double murder investigation in which Abadie was a witness. It was subsequently learned that at approximately the same time, Detective Pernia, who was working with Captain Gus Claverie at the murder scene, was approached by Philip Abadie, brother of the defendant, who also informed Detective Pernia that the defendant wanted to speak to her.

Detective Pernia testified that she arrived back at the

Detective Bureau at 4:37 p.m. She again advised Abadie of his rights verbally. He informed her that he had already been advised of his rights, had signed a waiver, and had been willing to cooperate. Abadie then phoned his brother Philip, asked Detective Pernia to talk to Philip, and ultimately consented to taking the polygraph exam. Detective Pernia made clear to Abadie that she was only investigating the murder; not the cab driver rape. She testified that at no time did Abadie request an attorney or to be returned to his home.

After the polygraph, Detective Pernia took a formal statement from Abadie summarizing his involvement in finding the victim's body. This statement lasted from 6:11 p.m. through 6:30 p.m.

Shortly after completing this statement, Detective Pernia learned that Abadie had failed the polygraph. It was also learned that Detective Chauvet had gotten a positive identification of Abadie by the victim of the unrelated "cab driver" rape. Detective Pernia then confronted Abadie, advised him of his rights in regard to the unrelated rape, and advised Abadie that it was possible that he failed the polygraph exam due to having the

rape case and other issues being on his mind. At 8:42 p.m., Abadie was again advised of his rights, signed a written waiver form, and gave a taped statement to Detective Chauvet concerning the rape of the cab driver. This statement and waiver form were also admitted into evidence but are not suject of this Motion To Suppress.

After giving the inculpatory statement in the unrelated rape case, Abadie requested that he be allowed to take a second polygraph to clear up the previous deception regarding the murder. A second polygraph was administered after a second waiver was read and signed. The consent forms for both exams were admitted into evidence. Deception was again noted in the second polygraph. At this point, Captain August Claverie was introduced to Abadie. Abadie agreed to speak to Captain Claverie, who also advised Abadie of his rights per Miranda. At 11:35 p.m., a brief statement was obtained by Captain Claverie wherein Abadie stated that he saw John Heath walking with the victim of the murder. This statement was concluded and, shortly afterward, Abadie says he saw Heath forcibly take the child into the woods. Another statement implicating Heath was taken.

Following that statement, Abadie and Captain Claverie spoke informally. According to Detective Pernia, at no time did Abadie request an attorney or ask to be transported home, nor was he threatened by anyone in any way. No testimony was presented in contradiction.

Abadie, attempting to throw suspicion elsewhere, advised Captain Claverie that the police needed to look into John Heath, as he was the man responsible. It was agreed that Captain Claverie would talk to Heath later because Abadie told Captain Claverie "you get back with me...John Heath is the one who did it." At 1:35 a.m., Abadie was transported to the jail, having been arrested by Detective Bruce Chauvet on the unrelated cab driver rape. Up to that point, Abadie had full access to and constantly used the phone; he was given coffee, water and cigarettes; he continued to lead the police to believe he could help solve the murder.

On Saturday, November 17th, Abadie was transported back to the Detective Bureau at approximately 3:30 p.m. based on his promises to help solve the murder. At that time, Captain Claverie advised Abadie that they had followed his suggestion and

checked up on John Heath, but that John Heath had been cleared. Abadie's response was, "So I fucking lied. What are you going to do? Sue me?" Captain Claverie testified that he again advised Abadie of his rights before speaking to him and at no time did he ask for an attorney, or invoke any of his Miranda rights. Abadie said he wanted to speak to Captain Claverie. Again, Abadie was allowed to make phone calls and given water and cigarettes upon request.

After making about ten phone calls to various people Abadie was returned to the jail at 9:15 p.m. on Saturday, November 17, 1990. Abadie said that he would continue to use the phone in the prison to locate his brother Philip. It was agreed between Captain Claverie and Abadie that whoever found Philip first would call the other.

On Sunday, November 18, 1990, Captain Claverie located Philip Abadie and brought Abadie back to the detective bureau at 4:30 p.m. to meet privately with Philip Adabie who arrived at 4:50 p.m. Philip Abadie then left the bureau and Abadie himself was advised of his rights. At this time neither Abadie nor Philip mentioned anything about wanting an attorney. In fact, Abadie

again promised that he could help solve the murder after making some contact with "my people on the outside." Another lengthy statement was taped in which Abadie merely repeated the facts as previously discussed about the murder. Between conversations with Claverie, Abadie was permitted to make seven phone calls to relatives and friends. At approximately 1:15 a.m. Abadie indicated that he wanted to be left alone for a couple of days "to think about this". Abadie was returned to the jail about 1:35 a.m. The sheriff's deputies did not talk to Abadie again until Tuesday, November 20, 1992 about 6:45 p.m. In the meantime, on Monday, November 19, 1990 Abadie was taken to Magistrate Court for appointment of counsel on the attempted rape charge; on this day there was no contact with the sheriff regarding the murder. On Monday, Abadie had a short conversation with the screening attorney who advised him of his rights pertaining to the rape charge. The attorney said that Abadie was unresponsive, withdrawn, and of blank expression. The lawyer was unaware of the murder charge and did not advise Abadie in this regard.

When Abadie was returned to the detective bureau on Tuesday, he informed Claverie that he had been to court.

Claverie again read him his Constitutional Rights and specifically asked if he had an attorney. Abadie replied he did not have an attorney, "but I'm going to get one." He told Captain Claverie that he wanted to talk to him that night. He began to cry and said, "look, I can't sleep at night, I can't eat. I'm completely miserable." He cried for a while.

Captain Claverie then showed Abadie Reebok tennis shoes which he identified as his. He then showed Abadie a picture of Raquel Fabre, covering up her opened eyes, and asked Abadie if he thought the footprint impressions on the child's face were similar in design to the shoe bottoms. Abadie cried some more, then told Claverie . . .I'll tell you what you want to know, but first I want to speak to my girlfriend, Christy Cotten. Abadie made a phone call in private to his girlfriend. He spoke to her from about 7:40 p.m. until 7:55 p.m. He was given cigarettes and time to compose himself. At 8:20 p.m., Abadie gave a verbal statement to Claverie implicating himself in the death of Raquel Fabre. The verbal statement ended at 8:40 p.m. and essentially was the same as the taped statement that began at 9:10 p.m. This taped statement was interrupted by Chief

Rodrigue, who advised Abadie an attorney named Bruce Netterville was on the phone and wanted to speak to him. Abadie replied, "well, I'll speak to him tomorrow". The taped statement resumed wherein Abadie repeats that he will speak to Netterville "tomorrow". The taped statement ended when the attorneys Bruce Netterville and Philip O'Neil appeared at the bureau and demanded to talk to Abadie. Thereafter, no further statements were taken from Thomas Abadie.

Abadie did not testify at the Motion to Suppress.

REASONS WHY CERTIORARI SHOULD BE GRANTED

1. Because the Louisiana Supreme Court incorrectly considered defendant's initial interview a "custodial interrogation" under Edwards v. Arizona, and Minnick v. Mississippi, contrary to this Court's definitions of "custodial interrogation" in Miranda v. Arizona, and Minnesota v. Murphy.

2. Because the Louisiana Supreme Court incorrectly determined that the return of defendant to the detective bureau to request that he take a polygraph examination was a "reinitiation of interrogation" under Edwards v. Arizona, and Minnick v. Mississippi, contrary to this Court's opinion in

Oregon v. Bradshaw.

LAW AND ARGUMENT

1. The Louisiana Supreme Court incorrectly considered defendant's initial interview a "custodial interrogation" under Edwards v. Arizona, and Minnick v. Mississippi, contrary to this Court's definitions of "custodial interrogation" in Miranda v. Arizona, and Minnesota v. Murphy.

Because Thomas Abadie and John Heath were involved in the discovery of Raquel Fabre's body on November 16, 1990, they were asked to come the Jefferson Parish Sheriff's Office for purposes of obtaining blood, saliva and hair samples. As part of this routine procedure, the men were also asked to submit to a polygraph examination. The Jefferson Parish Sheriff's Office transported both men to the detective bureau. Their participation was purely voluntary and they were not under arrest. Both men were free to leave at any time. Despite these facts, both men were verbally advised of their Miranda rights and told that the procedure was strictly voluntary on their parts.

After partially completing the body searches, Abadie was interviewed by Officer Chauvet regarding an unrelated attempted

rape of a cab driver which occurred on November 11, 1990, in Westwego. This officer again advised Abadie of his rights. During this questioning Abadie became angry, stated he wanted to speak to his "friend" Cal Hotard, and the questioning was discontinued. Abadie was put in a police vehicle for transport back to his home.

On route to his home, Abadie was returned to the detective bureau at the request of Chief Rodrigue. Rodrigue testified that he did not question Abadie in any way, but rather explained to him that they still would like for him to submit to a polygraph examination since he found the deceased child's body.

As its basis for suppressing the Abadie's later statements, the Louisiana Supreme Court misinterpreted this sequence of events by stating that "the defendant clearly requested counsel and the police halted interrogation." The Louisiana Court further said that the officer in charge reinitiated interrogation by having the defendant returned to the police station and subjected to requests for a polygraph examination. Therefore, defendant's subsequent request to talk to an acquaintance among the police force before submitting to the polygraph did not constitute an

initiation of interrogation." State v. Abadie, 612 So.2d 1, 2 (La. 1993).

The Louisiana Supreme Court erroneously conceived the first interview at the detective bureau as a custodial interrogation contrary to this Court's decision in Miranda v. Arizona, 86 S.Ct. 1602 (1966). Therein this Court set forth rules of police procedure applicable to "custodial interrogation" by stating that "by custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 86 S.Ct. at 1612. In reviewing custodial interrogation this Court further stated that a noncustodial situation is not converted to one in which Miranda applies simply because a reviewing court concludes that, even in the absence of any formal arrests or restraints on freedom of movement, the questioning took place in a "cohesive environment." Oregon v. Mathiason, 97 S.Ct. 711, 714 (1977).

In Mathiason, this Court determined that the questioning of Mathiason did not take place in a context where his freedom to depart was restricted in any way. He came to the police

station voluntarily and was immediately informed that he was not under arrest. At the close of a half hour interview Mathiason did in fact leave without hinderance. He was not given Miranda warnings. This Court determined that Miranda warnings were not required because this situation did not place such restrictions on his freedom as to render him "in custody."

In a later case, this Court held that Miranda warnings were not required where a defendant, although a suspect, was not placed under arrest and voluntarily came to the police station where he was allowed to leave unhindered after a brief interview. California v. Beheler, 103 S.Ct. 3517 (1983). The Beheler court said that by custodial interrogation it meant questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Id., 103 S.Ct. at 3519. The Beheler court rejected the California Supreme Court's totality of circumstances analysis where it focused primarily on the fact that the interview took place in a station house. This Court reiterated that, although the circumstances of each case must certainly influence a determination of whether a suspect is "in custody" for purposes

of receiving Miranda protection, the ultimate inquiry is simply whether there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest. Beheler, Id., supra at 3520.

The instant case is less coersive than Beheler. Beheler was interviewed shortly after the crime was committed, had been drinking earlier in the day, and was emotionally distraught. In the instant case, Abadie was not noticeably distraught until the interview on the unrelated rape began. There is no indication that he had been drinking or that there were any unusual circumstances to affect his emotional state. Upon his request, the interview was immediately terminated and Abadie was allowed to leave the police station by police vehicle.

The definition of custody was further refined in Minnesota v. Murphy, 104 S.Ct. 1136 (1984) where a probationer, who appeared before a probation officer, was not formally arrested, and whose freedom of movement associated with a formal arrest was not restrained, was not "in custody" for Miranda purposes. The concept of being "in custody" for Miranda purposes is narrowly circumscribed. Miranda requirements were

designed as a safeguard for questioning in the inherently coercive environment of a custodial interrogation. Roberts v. United States, 100 S.Ct. 1358 (1980). The type of custody defined for Miranda protection, and the application of Edwards v. Arizona, is that of a "formal arrest or the restraint on freedom of movement of the degree associated with a formal arrest." Minnesota v. Murphy, 104 S.Ct. at 1144.

Whereas Abadie was voluntarily at the police station, voluntarily submitted to blood, saliva, and hair samples, and was free to leave at any time, he was not in a custodial environment that required Miranda warnings such that Edwards v. Arizona could be applicable. Thus, the Louisiana Supreme Court misapplied Edwards v. Arizona, 101 S.Ct. 1880 (1991) and Minnick v. Mississippi, 111 S.Ct. 486 (1990) in reviewing these facts. When Abadie was questioned about the unrelated rape charge he was not in custody. Nevertheless, Miranda warnings were given to him and, when he asked to speak to his friend Cal Hotard (Cal Hotard was a lawyer and judge-elect) and asked to go home, the interview immediately ceased and he was driven towards his home. Since up to this time there was no custodial

environment, there could be no "reinitiation" of interrogation after this point. Any custodial interrogation that occurred after this point should be considered the initial custodial questioning.

Clearly, Abadie was never in custody until the time that he was returned to the police station and arrested on the unrelated rape charge. The Louisiana Supreme Court misinterpreted this Court's definition of a custodial interrogation under Miranda as further explained in California v. Beheler, supra, Oregon v. Bradshaw, supra, and Minnesota v. Murphy, supra.

2. **The Louisiana Supreme Court incorrectly determined that the return of defendant to the detective bureau to request that he take a polygraph examination was a "reinitiation of interrogation" under Edwards v. Arizona, and Minnick v. Mississippi, contrary to this Court's opinion in Oregon v. Bradshaw.**

After Abadie became angry and stated he wanted to speak to his friend, Cal Hotard, the police put him in a vehicle for transportation home. While on the route home Chief Rodrigue radioed and had the detective return Abadie to the

bureau to request that he submit to the routine polygraph examination that is generally administered to persons finding bodies. At the bureau, when asked to take the polygraph examination, Abadie replied that he wanted to speak to Cal Hotard, an attorney. Chief Rodrigue immediately allowed Abadie to speak privately by telephone to Mr. Hotard. Chief Rodrigue also spoke to Mr. Hotard and was advised by him that he could not represent Abadie. After these conversations Abadie asked to speak to Detective Maggie Pernia, a trusted deputy whom Abadie knew from a previous murder investigation. During this time period Abadie was allowed to use the telephone, move around the detective bureau, smoke, drink liquids, and promote his ability to help the sheriff find the murderer of Raquel Fabre.

Abadie still was not a focus of the murder investigation; nor was he subject to questioning as a suspect in the murder. Abadie was there to take a routine polygraph examination as part of the police procedure to eliminate as suspects persons who find a body. Abadie was never formally "questioned". His request to speak to Cal Hotard was immediately responded to as was his request to speak to a familiar deputy. Abadie agreed to take a

polygraph examination after talking to Cal Hotard, his brother Phillip, and Detective Maggie Pernia. He was also given his Miranda warnings before the polygraph examination.

It was only after Abadie had taken the polygraph examination that he was positively identified as the perpetrator in the "cab driver" rape and arrested. He was advised of his rights, he signed a waiver, and gave a taped inculpatory statement regarding the rape of the cab driver. (The statements regarding the rape are not at issue here.) Thereafter, Abadie took a second polygraph test which he also failed. After his arrest Abadie did not request an attorney or ask to be transported home. There was no evidence adduced at the hearing that he was coerced or threatened during this time period. In fact, the evidence showed that Abadie continued to lead the deputies to believe that he could help them solve the murder.

Abadie was jailed on the rape of the cab driver but was allowed to make phone calls to various people on Saturday as well as Sunday. He continued to brag that he could help the sheriff solve the murder. From Sunday evening until Tuesday evening Abadie was not talked to by the Sheriff's deputies at his

request, although, on Monday, Abadie was taken to magistrate court and met for a short time with an appointed counsel on the cab driver rape charge. On Tuesday night when Abadie made his inculpatory statement he was advised of his rights. He said that he was going to get an attorney but he wanted to talk to Captain Claverie first. After talking to Claverie, he was allowed to call his girlfriend and was given cigarettes and time to compose himself. Then Abadie made a statement implicating himself in the death of Raquel Fabre.

The Louisiana Supreme Court incorrectly determined that the return of Abadie to the detective bureau to request that he take a polygraph examination was a reinitiation of the interrogation. Because Abadie was never in custody to begin with and was not interrogated as a suspect in the murder of Raquel Fabre, his return to the detective bureau could hardly be considered a reinitiation of interrogation. This Court defined custodial interrogation in Oregon v. Mathiason, 97 S.Ct. 711 (1977), as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. When Abadie first

visited the detective bureau his freedom to depart was not restricted in any way. He came voluntarily to the bureau and was never arrested. When he requested his friend, Cal Hotard, and to be brought home, he was immediately placed in the police vehicle. Despite this non-custodial environment Abadie was advised of his Miranda rights at every point in an abundance of caution by the sheriff. This Court explicitly recognized that Miranda warnings are not required "simply because the questioning takes place in the stationhouse, or because the questioned person is one whom the police suspect." California v. Beheler, 103 S.Ct. 3517 (1983). In this case, Abadie was brought to the detective bureau for a routine screening as a person who found a body. His movements were not restricted in any way and he was allowed to return home upon request.

On return to the detective bureau it was not as a suspect in the murder but to complete the routine police procedure with a polygraph examination. Abadie did not become a focus of investigation, or have his movements restricted until he was formally arrested on the unrelated cab driver rape. But even after his arrest on the unrelated charge, Abadie's movements

were not restricted as he was allowed to make phone calls, smoke cigarettes, talk to family members, and counsel with Detective Maggie Pernia.

This Court determined that the Oregon Court misapplied Edwards v. Arizona, supra, in Oregon v. Bradshaw, 103 S.Ct. 2830 (1983). The defendant in Bradshaw was in custody after being arrested on a related charge. While being transported to the jail he asked, "Well, what is going to happen to me now?" The officer responded that defendant did not have to talk to him, then a discussion followed. The officer suggested defendant take a polygraph examination to support his denial of involvement in the murder. In reversing the Oregon Court's suppression of defendant's subsequent statements, this Court determined that the discussion that ensued with the police, initiated by defendant, was not a violation of the Edwards rule. The statement thereafter made to the polygraph examiner was voluntary and the result of a knowing waiver. Oregon v. Bradshaw, 103 S.Ct. at 2835.

In the instant case, the deputy's request that defendant take a polygraph was not in a "custodial" setting and not as a

focus of the investigation. There was no "bright line" Edwards rule to violate. Thereafter, defendant was properly read his rights which he voluntarily waived before taking the polygraph. The Louisiana Supeme Court misapplied Edwards to these facts.

In Edwards v. Arizona, 101 S.Ct. 1880 (1981), this court concluded that if an individual states that he wants an attorney, the interrogation must cease until an attorney is present. It reconfirmed Miranda that to reinterrogate an accused in custody if he has clearly asserted his right to counsel is inconsistent with Miranda. Id., 101 S.Ct. at 1885.

The instant case simply cannot be viewed under Edwards v. Arizona, supra. Abadie's first visit at the detective bureau was non-custodial and did not involve any questioning that could be labeled as "interrogation". Abadie's return to the detective bureau to take the polygraph examination still could not be classified as "interrogation" or as "custodial." Abadie simply was not a suspect in the murder and was not being questioned as a suspect; he returned to the bureau merely to complete a routine police procedure. Abadie's presence at the detective bureau on this second occasion cannot be viewed as custodial until his

movements are restricted by his arrest as the perpetrator in the unrelated rape. After this time, he was clearly given his Miranda warnings, allowed to use the telephone and to speak with Det. Pernia at his request.

In order for Edwards to be applicable to these facts, the first visit to the detective bureau would have had to have been a "custodial interrogation." The Louisiana Supreme Court misapplied this court's definition of "in custody" as well as "interrogation" in analyzing these facts. Abadie's first "custodial" appearance in the detective bureau was at the time of his arrest on the unrelated rape charge. Until he became the focus as a perpetrator of a crime and/or arrested, there could be no custody "interrogation." The request to submit to a polygraph is not interrogation for purposes of Miranda and Edwards v. Arizona.

If there is no violation of the Edwards rule, the next inquiry is whether a valid waiver of the right to counsel and the right to silence has occurred. Edwards v. Arizona, supra. In the instant case, the trial court found that there were no threats, promises, or inducements to talk, (Appendix C-24c), that the defendant was properly advised of his rights and understood

them, (Appendix C-28c). The defendant in the instant case was allowed free use of the telephone to contact friends and family members; he was allowed freedom of movement in the detective bureau; he was supplied with cigarettes and drinks. At his request he was totally left alone from late Sunday until Tuesday evening. On Monday, he went before the magistrate and talked with an attorney. He was not contacted until Tuesday evening, at which time he said he would like an attorney but wanted to talk to Captain Claverie first. Abadie was consistently read his Miranda rights and offered no evidence at the hearing to indicate that he did not at all times talk to the detectives freely and voluntarily.

As the Louisiana Supreme Court incorrectly analyzed these facts under Edwards v. Arizona and Minnick v. Mississippi, and ignore Oregon v. Bradshaw, it's opinion should be reversed.

CONCLUSION

After considering this court's definitions of "custody" and "interrogation" it is clear that the facts of this case do not support the application of Edwards v. Arizona and Minnick v. Mississippi. A further review of the facts of this case demonstrate that

Abadie's inculpatory statement regarding the murder of Raquel Fabre was voluntary and the result of a knowing waiver of his right to remain silent under the Fifth and Fourteenth Amendments of the Constitution. This writ should be granted to correct the Louisiana Supreme Court's misinterpretation and misapplication of this Court's opinions.

Respectfully Submitted,

DOROTHY A. PENDERGAST
ASSISTANT DISTRICT ATTORNEY
COURTHOUSE ANNEX
GRETNA, LOUISIANA 70053
(504) 368-1020

APPENDIX A - LOUISIANA SUPREME COURT OPINION

SUPREME COURT OF LOUISIANA

No. 92-KK-0797

State Of Louisiana

Versus

Thomas Abadie

On Writ of Review to the 24th Judicial District Court, Parish of Jefferson

Dennis, J.

In Edwards v. Arizona, 451 U.S. 477 (1981) and Minnick v. Mississippi, 111 S.Ct. 486 (1990), the Court held that when an accused has asked for counsel he is not subject to further custodial interrogation by the authorities without counsel present, whether or not the accused has consulted with an attorney, unless the accused himself **initiates** further communication, exchanges, or conversations with the police. The issues in the present case are whether defendant requested counsel and, if so, whether he subsequently **initiated** further interrogation by the authorities, prior to confessing to a murder. The trial court denied the defendant's motion to suppress the confession. The court of appeal denied writs. We reverse. The defendant clearly

requested counsel and the police halted interrogation. However, the officer in charge **reinitiated** interrogation by having the defendant returned to the police station and subjected to requests for polygraph examination. Therefore, defendant's subsequent request to talk to an acquaintance among the police force before submitting to the polygraph did not constitute an **initiation of** interrogation.

The defendant relies almost exclusively on well-settled, clearly applicable federal constitutional principles in his oral and written arguments. Because he is clearly entitled to relief on these grounds, we do not discuss the state constitutional questions and other federal issues that might have been raised.

On November 15, 1990, the body of seven-year-old homicide victim, Raquel Fabre, was found near the Tanglewood apartments in Westwego. The defendant, Thomas Abadie, took part in the search and was among those who found the body. The next day, November 16, 1990, four officers brought him to the police station for questioning. Abadie was kept in a locked holding room, and samples of his hair, blood and saliva were taken. One officer thought Abadie resembled the composite of

a suspect in an unrelated attempted rape case and initiated plans to put his picture in a photographic line up. Abadie was advised of his Miranda rights and questioned for approximately fifteen minutes about the murder. But when Westwego police officer Bruce Chauvet began to question him about the unrelated attempted rape, Abadie became agitated, claimed he was being given a "bum rap" and refused to answer any more questions until he spoke to "his friend, Cal Hotard," a local attorney and judge-elect. Chauvet, who knew that Hotard was an attorney, suspended the interrogation and informed the other officers that Abadie had asked to speak to Hotard. In response to Abadie's request to leave the police station, he was placed in a police car and driven toward his residence.

Within minutes, however, Chief of Criminal Investigations, Richard Rodrigue, recalled the police car to the station house by radio. Rodrigue asked Abadie to agree to further questioning under polygraph although Rodrigue knew that Abadie had requested counsel. Abadie again asked to speak to a lawyer. Rodrigue asked which lawyer, and Abadie again named Calvin Hotard. Rodrigue phoned Hotard, told him of the

investigation and that Abadie had asked to confer with him. Hotard spoke to Abadie but told him that he could not give advice or act as attorney in the matter because he recently had been elected judge. Hotard repeated the substance of these remarks to Rodrigue before hanging up. While Hotard talked to Rodrigue, Abadie called his brother on another phone in an adjoining room. During this conversation Abadie said that he would like to talk to Sergeant Maggie Pernia, a police officer that he knew. When Rodrigue finished talking to Hotard, he immediately renewed his efforts to persuade Abadie to submit to questioning under polygraph. Abadie refused and asked to talk to Sergeant Pernia.

Rodrigue sent for Pernia but continued his efforts to persuade Abadie to answer further questions about the homicide under polygraph. When Sergeant Pernia arrived at the police station she also importuned Abadie to submit to a lie detector test. He resisted but ultimately complied when his brother urged him to by telephone. During the polygraph examination Abadie gave a description of innocent involvement in discovering the homicide victim's body. After the polygraph, Sergeant Pernia

continued to interrogate Abadie and took a formal statement summarizing his exculpatory story. Shortly thereafter, Pernia and other officers informed Abadie that he had failed the polygraph regarding the murder. Moreover, they told Abadie he had been positively identified as the culprit in the unrelated attempted rape case. Abadie was reduced to tears by this information and submitted to a second polygraph in an attempt to clear himself of the murder. However, he failed the test again. Later that evening Abadie was arrested on the attempted rape charge. After this he was confined to jail except during custodial interrogation sessions.

From 11:30 p.m. to 1:30 a.m. on November 16-17, 1990, Captain August Claverie questioned Abadie. He confronted Abadie with his failure to pass the polygraph and inquired as to the reason. In response, Abadie claimed that the had seen John Heath grasp the victim and force her into the woods.. However, when he was told later that Heath had been "cleared" by polygraph and further investigation, Abadie admitted that he had lied.

On November 17, 1990, Saturday, Claverie interrogated

Abadie from about 3:15 p.m. until 9:15 p.m. During this time Abadie was allowed to make approximately ten telephone calls to various people.

On November 18, 1990, Sunday, Claverie interrogated Abadie off and on over a period of several hours. Abadie was allowed to speak to his brother for about twenty minutes. At 7:30 p.m. Abadie agreed to make "a real good statement...on everything from the beginning to right [then]." Claverie then recorded a lengthy statement, which again implicated Heath. Between interrogations Abadie was permitted to make some phone calls, which he used to talk to relatives and friends apparently in unsuccessful attempts to obtain a lawyer. At approximately 1:15 a.m., Abadie indicated that he wanted to be left alone for a couple of days "to think about this." Abadie was returned to the jail at about 1:35 a.m.

On November 19, 1990, Monday, Abadie was taken to magistrate court for appointment of counsel on the attempted rape charge. The screening attorney advised him of his rights pertaining to the rape charge through a cell door portal for two minutes. The attorney said Abadie was unresponsive, withdrawn,

and of blank expression. The lawyer was unaware of the murder charge and did not advise him in this regard.

On November 20, 1992, Tuesday, at about 6:45 p.m., Captain Claverie had Abadie brought to him from the jail for further questioning. Because Abadie had been to court, Claverie asked if he had a lawyer. Abadie told him he did not but that he was going to get one. Claverie confronted Abadie with his tennis shoes and a picture of the murder victim showing a shoe imprint on her face. He asked Abadie if the impression on the child's face matched the design on his shoe bottoms. Claverie continued his interrogation of Abadie, who by this time was crying and complaining that he was miserable. After being allowed to talk to his girlfriend by phone, Abadie gave an unrecorded oral statement implicating himself in the murder. Following the unrecorded statement which ended abut 8:40 p.m., Abadie began to repeat the substance of his confession in a tape recorded statement.

Shortly after 9:00 p.m. a lawyer acting at the request of Abadie's girlfriend's mother called the stationhouse and asked to speak to Abadie. Chief Rodrigue relayed Abadie's response to

the lawyer that he would talk to him the next day. The lawyer rushed to the station with his law partner. The recording of Abadie's statement was interrupted with their arrival at 9:26 p.m. According to the attorneys, Abadie was emotionally distraught, irrational, incoherent, hyperagitated, and disassociated from reality. Finally, however, with their assistance he was able to request the police to terminate the interrogation. Ababie was returned to the jail and no further statements were taken from him.

Miranda v. Arizona, 384 U.S. 436, 444-45 (1966), itself indicated that if a suspect indicates "in any manner and at any stage of the process that he wished to consult with an attorney before speaking there can be no questioning." The Court's later cases did not abandon that view. In Michigan v. Mosley, 423 U.S. 96 (1975) the Court noted that Miranda had distinguished between the procedural safeguards triggered by a request to remain silent and a request for an attorney and had required that interrogation cease until an attorney was present if the individual stated that he wanted counsel. 423 U.S., at 104, n. 10; see also id. at 109-111 (White, J., concurring). In Fare v. Michael C., 442

U.S. 707, 719 (1977), the court referred to Miranda's "rigid rule that an accused's request for an attorney is per se an invocation of his Fifth Amendment rights, requiring that all interrogation cease. "Rhode Island v. Innis, 446 U.S. 291, 298 (1980), a case in which a suspect in custody had invoked his Miranda right to counsel, again referred to the "undisputed right" under Miranda to remain silent and to be free of interrogation "until he had consulted with a lawyer."

Edwards v. Arizona, 451 U.S. 477 (1981) reconfirmed these views and, to lend them substance, held that, when an accused prior to or during interrogation asks for counsel, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated, custodial interrogation even if he has been advised of his rights; and that such an accused is not subject to further interrogation by the authorities until counsel is present, unless the accused himself initiates further communication, exchanges, or conversations with the police. Recently, in Minnick v. Mississippi, 111 S.Ct. 486 (1990), the Court confirmed that the Edwards rule bars police-initiated interrogation unless the accused has counsel with him at the time

of questioning. "Whatever the ambiguities of our earlier cases on this point, we now hold that when counsel is requested, interrogation must cease; and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney." Id. at 491. The Edwards rule, moreover, is **not** offense-specific: once a suspect invokes the Miranda right to counsel for interrogation regarding one offense, he may not be reapproached regarding **any** offense unless counsel is present. McNeil v. Wisconsin, 111 S.Ct. 2204, 2208 (1991), citing Arizona v. Roberson, 486 U.S. 675 (1988).

Therefore, once a suspect asserts his Miranda right to counsel, not only must the current interrogation cease, but he may not be approached in connection with any further criminal investigation until his counsel is present. McNeil v. Wisconsin, 111 S.Ct. 2204, 2208 (1991). And if the police do subsequently initiate an encounter in the absence of counsel (assuming there has been no break in custody), the suspect's statements are presumed involuntary and therefore inadmissible as substantive evidence at trial, even where the suspect executes a waiver and his statements would be considered voluntary under traditional

standards. Id.

The present case raises three interrelated issues: (1) whether the accused asked for counsel; (2) whether the police reapproached the accused in connection with the criminal investigation without his counsel being present; and (3) whether the accused initiated further communication with the police before they initiated an encounter with him in the absence of counsel.

1.

Miranda emphatically declared that if "the individual indicates in any manner at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease" and that if he "states that he wants an attorney, the interrogation must cease until an attorney is present." Miranda, supra at 473-74. The request need not be formal or direct, or for a particular attorney, but is sufficiently conveyed by even an unsuccessful attempt to reach a lawyer, United States v. DeLeon, 412 F.Supp. 89 (D.V.I. 1976), State v. Slobodian, 57 N.J. 18, 268 A.2d 849 (1970), United States v. Porter, 764 F.2d 1 (1st Cir. 1985), Hendrickson v. State, 688 S.W.2d 295 (Ark. 1985), or an inquiry whether the police could recommend a lawyer. 1 LaFave

& Israel, Criminal Procedure § 6.9 p. 532 (1984). Indeed, courts must give a broad rather than a narrow interpretation to a suspect's request for counsel. Michigan v. Jackson, 475 U.S. 625, 633 (1986).

Applying these precepts, we conclude that Abadie made direct, clear and unequivocal requests for counsel of both Chauvet and Rodrigue when each of the officers first accosted him. Furthermore, Abadie reaffirmed his request for counsel indirectly by unsuccessfully seeking legal advice and assistance by phone from Calvin Hotard, the attorney and judge-elect. All of these Miranda right to counsel requests occurred before Rodrigue reapproached Abadie and asked him to answer questions about the investigation under polygraph. There was no break in custody. Counsel was not present. As a matter of fact, Abadie apparently made several other unsuccessful attempts to obtain the assistance of counsel before he finally confessed on the fifth day of the interrogation.

2.

When a defendant invokes his Miranda right to counsel, the admissibility of his subsequent confessions under federal law

is to be determined by a two-step analysis: it first must be asked whether defendant "initiated" further conversation, and if the answer is yes it then must be inquired whether defendant waived his right to counsel and to silence, "that is, whether the purported waiver was knowing and intelligent * * * under the totality of the circumstances, including the necessary fact that the accused, not the police, reopened the dialogue with the authorities." Oregon v. Bradshaw, 462 U.S. 1038, 1044-46 (1983); See LaFave & Israel, § 6.9, at 538. We do not reach the second prong of the analysis in the present case, however, because the police "reapproached" Abadie for further interrogation before he could have "initiated" further communications with the police.

The term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. Rhode Island v. Innis, 446 U.S. 291 (1980). This is an objective test which does not require a determination of the actual perception of the suspect but prohibits police speech or conduct that creates a

situation in which the suspect probably will experience the functional equivalent of direct questioning by concluding that the police are trying to get him to make an incriminating response LaFave & Israel, Criminal Procedure § 6.7, p. 501-02. (1984 & supp. 1991); White, Interrogation Without Questions: Rhode 21 Island v. Innis and United States v. Henry, 78 Mich. L. Rev. 1209, 1231-32 (1980).

Consequently, Chief Rodrigue's attempts to get Abadie to submit to questioning about the murder as part of a polygraph examination was an investigatory "reapproach" or a "reinitiation" of interrogation, because the officer should have realized that this conduct would probably be viewed by the suspect as designed to get him to make an incriminating response, and because it was in fact, as Chief Rodrigue admitted, an attempt to question Abadie about the offense as part of a lie detector test.

3.

Because the police-reinitiated interrogation or investigatory approach was in progress before Abadie responded to its pressure by expressing a possible willingness to talk to Sergeant Pernia about the case, Abadie did not "initiate" or

"reopen" interrogation. As a matter of law the presumption raised by Abadie's requests for counsel -- that he considered himself unable to deal with the pressures of custodial interrogation without legal assistance -- did not disappear simply because the police approached him, still in custody, still without counsel, with a slightly modified form of the same criminal investigation. See Arizona v. Roberson, supra at 683. In the interrogation context "initiation" means to "begin" or "set-going.". In order for there to be valid waiver, the suspect must have "started," not simply "continued," the interrogation; for, just as one cannot start an engine that is already running, a suspect cannot "initiate" an on-going interrogation. Christopher v. Florida, 824 F.2d 836, 845 (11th Cir. 1987); Smith v. Wainwright, 777 F.2d 609, 618 (11th Cir 1985). It was only after Chief Rodrigue reapproached the defendant and reinitiated the communication and investigation, in the absence of counsel and without a break in custody, that defendant asked to talk to Sergeant Pernia. Therefore, defendant did not "initiate [] further communication, exchanges, or conversation with the police." Edwards v. Arizona, 451 U.S. at 484. Indeed, Edwards would be

rendered meaningless if government agents were permitted to continue or reinitiate interrogation after the request for counsel and then claim that the consequent response by the accused represented initiation which permitted a waiver of the asserted counsel right. United States v. Gomez, 927 F.2d 1530, 1539 (11th Cir 1991)).

In summary, we conclude that Abadie asked for counsel when the interrogation first began, the officers stopped but reinitiated the custodial interrogation without counsel present, and Abadie's subsequent request to talk to Sergeant Pernia could not start the police-reinitiated interrogation that was already in progress. Therefore, Abadie's statements made during that uncounseled interrogation did not amount to a valid waiver and hence should have been suppressed as being inadmissible evidence. The judgment of the trial court is reversed and the case is remanded.

REVERSED AND REMANDED.

SUPREME COURT OF LOUISIANA

No. 92-KK-0797

State Of Louisiana

Versus

Thomas Abadie

MARCUS, Justice (dissenting)

I agree with the majority's finding that defendant invoked his right to counsel. However, I disagree with majority's conclusion that the request by Chief Rodrigue that defendant take a polygraph test was a "further interrogation" after he invoked his right to counsel. Chief Rodrigue testified that he did not question defendant at this time, but merely asked him to take the polygraph test and gave him some reasons why he should take it. Defendant responded in the negative to the request to take the polygraph test and subsequently gave a confession. Under these circumstances, I believe defendant was never re-interrogated by police after he requested counsel, and his decision to re-initiate contact with police should be considered voluntarily. Accordingly, I respectfully dissent and would affirm the decision of the trial court denying the motion to suppress.

APPENDIX B - FIFTH CIRCUIT DENIAL AND OPINION

APPLICATION FOR WRITS

NO. 91-K-901

COURT OF APPEAL, FIFTH CIRCUIT

STATE OF LOUISIANA

NOV 27 1991

/s/GLYN RAE WAGUESPACK
Dy. Clerk

STATE OF LOUISIANA

VERSUS

THOMAS ABADIE

In Re THOMAS ABADIE
Applying for WRIT OF REVIEW DIRECTED TO THE HONORABLE G. THOMAS PORTEOUS, JUDGE, 24TH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, NUMBER 90-5161, DIVISION "A"

Ms. Ginger Berrigan
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WRITS DENIED
SEE ATTACHED.

WRIT NO. 91-K-901

APPENDIX - 19b

STATE V. THOMAS ABADIE

WRITS DENIED

Relator is Thomas Abadie, whose motion to suppress various statements was denied in the 24th Judicial District Court. The motion was heard on June 13, 14, 25 and 26, 1991 and denied orally in open court on July 26, 1991.

The trial judge did not find any state and federal constitutional violations and he stated that there was "an absolute failure" to show that force or intimidation had been used by police officers. The record (transcript) fully supports these findings.

Further, the record shows that if Abadie acquired any protective or procedural right by asking to see his friend, Calvin Hotard, he (Abadie) did subsequently reinstitute communications with the police by asking to speak with Sgt. Maggie Pernia.

As Abadie was not called as a witness, the record does not indicate why he wanted to speak with Sgt. Pernia. Nevertheless, he obviously made this request, through Chief Richard Rodrigue and also through his brother Philip. Philip contacted Sgt. Pernia at the murder scene, where she was

working, and told her that his brother, who was at the detective bureau, wanted to converse.

After voluntarily reinstituting a dialogue between himself and the police, Sgt. Pernia in particular, it was not until four days later that Abadie actually implicated himself in the little girl's death, saying then only that an accident had occurred.

Abadie was in close police custody from November 16, the day he was charged with attempted rape and sexual battery of a female taxicab driver, until his last recorded statement on November 20th. During that time, there is no doubt that police officers were persistent in their murder investigation and that much of their attention was focused on Abadie. Persistence, however, is not per se unfair or unconstitutional unless combined with some form of illegal police activity.

The record shows that Abadie was treated properly during the five-day custodial period. He was free to use the telephone, which he often did, and he was assisted in locating persons he sought. He was not mistreated or misled.

One of the Miranda rights explained over and over to Abadie is an accused's right to the service of an attorney even if

he or she could not afford one. Yet Abadie at no time asked for a lawyer to be appointed before or after asking to see Hotard.

Under LSA-R.S. 15:451, the prosecution must affirmatively show that the confession or admission was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. In deciding admissibility, a trial judge must consider the totality of circumstances. See State v. Serrato, 424 So.2d 214 (La. 1983).

Here, we cannot say the trial judge erred. Even assuming that Abadie's asking for Hotard was an unequivocal request for an attorney, it seems clear that Abadie subsequently and without undue police motivation did reinstitute communications with the police.

GRETNA, LOUISIANA, this 11th day of March, 1992.

/s/ H. Charles Gaudin
Judge H. Charles Gaudin

/s/ Charles Grisbaum, Jr.
Judge Charles Grisbaum, Jr.

/s/ Thomas C. Wicker, Jr.
Judge Thomas C. Wicker, Jr.

APPENDIX C - TRIAL COURT JUDGMENT AND REASONS FOR JUDGMENT

TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

THE STATE OF LOUISIANA	NUMBER 90-5161
VERSUS	
THOMAS ABADIE	DIVISION "A"

Proceedings in the above-numbered and entitled cause taken on July 26, 1991, in open court, before the Honorable G. Thomas Porteous, Jr., Judge presiding.

APPEARANCES:

FOR THE STATE:
ANDREA JANZEN, Assistant District Attorney
JAMES MAXWELL, Assistant District Attorney

FOR THE DEFENSE:
ROBERT TOALE, Attorney at Law

Reported by: Sandra B. Hancock, OCR, CSR

PROCEEDINGS

MS. JANZEN:

Number 39, the State versus Thomas Abadie. Jim Maxwell and Andrea Janzen for the State.

MR. TOALE:

Robert Toale on behalf of Mr. Abadie.

THE COURT:

Just for the record, it is a correct statement, Mr. Toale and Ms. Janzen, that you were provided with the transcripts of all four days of the hearing.

MS. JANZEN:

Yes.

MR. TOALE:

Yes.

THE COURT:

I have received memos from all parties, Mr. Abadie, on your case. I have likewise reviewed the transcripts thereof. I have listened to the tapes again. The issue before this Court is a Motion to Suppress various statements that you gave.

In short, there are a variety of statements that you gave but it appears that only one of them will have no applicability to this proceeding because it deals with a seaparte [sic] event all together and I'm not necessarily ruling on that one at this point in time and that was the one, I believe, to Officer Chauvet at some point in time.

I'm not expressing any opinions on your statements to Officer Chauvet. It that correct, Mr. Toale?

MR. TOALE:

Yes.

THE COURT:

It's the other statements that were given to Sergeant Pernia, statements that you gave with Sergeant Pernia and Captain Claverie and then one final statement that you gave it appears to, two final statements that you gave only to Captain Claverie. You've heard several issues on your Motion to Suppress which we took over a four day period. Let me take them in some degree of sequence.

One of your allegations is that there has been some intimidation or force used against you because there was testimony or at least attempted testimony to be elicited that a weapon was used against you during the course of your incarceration and that other forms of intimidation were used against you. This Court feels that there is an absolute failure of any proof of those

particular allegations. That has not truly been briefed in any fashion and his Court is of the opinion that those circumstances do not exist.

The other major issue you raised is that after your conversations with Officer Chauvet, I believe-- give me one second, Officer Chauvet on June 14 said and I quote from page 11 at line 10 through 15 starting at eight:

Question: And when he made that comment to you what did you do?

Answer: At that time I stopped the interview. I went outside and spoke to Detective Lee Jones and told him that Mr. Abadie wants to speak to his friend Calvin Hotard before he answered any more questions in reference to my investigation.

And again earlier on page 11, lines four through seven, quote: He stated I was trying to put a bum rap on him and he didn't want to answer any more questions until he spoke to his friend Calvin Hotard.

The short version is, has the State violated your rights under Miranda, under Edwards, or under the most

recent case of Minnick: was there an unequivocal request for counsel such that any further questioning had to be ceased and stopped. There is a caveat there too because even had you done that there is then the question of whether or not you voluntarily reinstituted discussions absent the police intervention. It appears that once you made that request, it was undisputed that once you made that request you weren't in fact incarcerated, but you were in the process of being transported back to Westwego. At that point in time Chief Rodrigues asked that you be brought back to the bureau. At that point in time you were not questioned but rather was simply asked to respond to a polygraph test with respect to finding of Fabre's body. A that point in time you again pursuant to the testimony of Chief Rodrigues asked to speak to Mr. Hotard. A contact was made with Mr. Hotard. Judge Hotard in fact testified here in my court and indicated that he advised you that he could not represent you. He further indicated he took no further involvement in it; didn't ask you any facts or circumstances of that case and,

in fact, did not instruct you as to what to do. After that you then asked to speak to Sergeant Pernia. Based upon that various things occurred.

A further question is whether or not that activity triggers Minnick, Edwards and/or Miranda. One of the things that must be determined is has there been an unequivocal request for counsel. This Court has looked at several cases with respect to that particular event. Those cases are Michigan versus Mosley, 96 Supreme Court, 321. Minnick itself that deals with that particular aspect in Arizona versus Robinson and various other cases therein. The Court is satisfied that your request was not sufficiently phrased and was at no point in time a request not to speak to the police but rather was a different request and that is to speak with a friend, Mr. Hotard, who was an attorney. You were advised of your rights on multiple and numerous occasions. At no time does any of the testimony indicate that you invoked your right to remain silent or to the assistance of counsel.

Further, it appears that your conversations with

Sergeant Pernia were of your own request and accordingly were purely voluntary and at your insistence. I tend to agree with the testimony of the officers and believe it is correct that your position at that time was that you were assisting these particular officers with respect to this event, that you were not under arrest for that event clearly at that particular time. You were in custody for another crime, technically in custody with respect to questions being hereon, but that all of your actions were freely and voluntarily made by you and were in fact instituted if not originally consistently throughout at your own behest.

Accordingly, this Court does not find the violation of Minnick versus Mississippi, 59 Law Week, 4037 nor does it find the violation of Edwards and/or Miranda.

There is some question, however, about Mr. Haymen appearing at the jail when you were brought to magistrate with respect to your unrelated attempted rape charge. The Court has looked at McNeal versus Wisconsin, 59 Law Week, 4636, a United States Supreme

Court case just recently decided, and is satisfied that we have two different test standards, a Sixth Amendment situation was protected by Mr. Haymen's attempted representation of you in that unrelated attempted rape charge. There was no exercise of your Fifth Amendment Right and accordingly agrees that McNeal is applicable and there's no further violation of your rights.

Accordingly, your Motion to Suppress all of your statements is hereby denied.

MR. TOALE:

We note an objection, Your Honor.

THE COURT:

Your objection is noted.

APPENDIX - 30c

CERTIFICATE

I, Sandra B. Hancock, do hereby certify that the foregoing transcript is true and correct as taken by me in open court on July 26, 1991, Division "A", before the Honorable G. Thomas Porteous, Jr., in the matter entitled THE STATE OF LOUISIANA VERSUS THOMAS ABADIE, NUMBER 90-5161.

s/s S. Hancock
Sandra B. Hancock, O.C.R., C.S.R.
Twenty-Fourth Judicial District Court
Parish of Jefferson
State of Louisiana

APPENDIX - 31c

24TH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA
VS.

THOMAS ABADIE

No. 90-5161
Division A
NON PRO TUNC OF
Date 7/26/91

(OFFICIAL MINUTES)
(AUG. 26 1991)

DISTRICT ATTORNEY A. JANZEN & J. MAXWELL
JUDGE G. THOMAS PORTEOUS

THE DEFENDANT THOMAS ABADIE APPEARED BEFORE THE BAR OF THE COURT THIS DAY FOR A RULING ON THE MOTION TO SUPPRESS STATEMENTS. THE DEFENDANT WAS REPRESENTED BY ROBERT TOALE, ATTORNEY. IT WAS STATED ON THE RECORD THAT BOTH THE STATE AND THE DEFENSE WERE PROVIDED WITH A TRANSCRIPT OF THE MOTION TO SUPPRESS. THE COURT DENIED THE MOTION TO SUPPRESS STATEMENTS. THE DEFENSE OBJECTED TO THE COURTS RULING, OBJECTION NOTED BY THE COURT. THE DEFENDANT WAS REMANDED TO PARISH PRISON.

/s/ ANDREA P. ROGERS
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

/s/ DARCY GRIFFIN
DEPUTY CLERK